
STATUTORY INSTRUMENTS

2009 No. 642

The Insolvency (Amendment) Rules 2009

Insertion of new Chapters 31, 32 and 33 of Part 6 - debt relief restrictions orders and undertakings

47. At the end of Part 6 add—

“CHAPTER 31

DEBT RELIEF RESTRICTIONS ORDER

Interpretation

6.252. In this Chapter and in Chapter 32, “Secretary of State” includes the official receiver acting in accordance with paragraph 1(2)(b) of Schedule 4ZB to the Act.

Application for debt relief restrictions order

6.253.—(1) Where the Secretary of State applies to the court for a debt relief restrictions order to be made in relation to a person in respect of whom a debt relief order has been made under paragraph 1 of Schedule 4ZB to the Act, the application shall be supported by a report by the Secretary of State.

(2) The report shall include—

- (a) a statement of the conduct by reference to which it is alleged that it is appropriate for a debt relief restrictions order to be made; and
- (b) the evidence on which the Secretary of State relies in support of the application.

(3) Any evidence in support of an application for a debt relief restrictions order provided by persons other than the Secretary of State shall be by way of an affidavit.

(4) The date for the hearing shall be no earlier than 8 weeks from the date when the court fixes the venue for the hearing.

(5) For the purposes of hearing an application under this Rule by a registrar, Rule 7.6(1) shall not apply and the application shall be heard in public.

Service on the defendant

6.254.—(1) The Secretary of State shall serve notice of the application and the venue fixed by the court on the debtor not more than 14 days after the application is made at court.

(2) Service shall be accompanied by a copy of the application, together with copies of the report by the Secretary of State, any other evidence filed with the court in support of the application, and an acknowledgement of service.

(3) The defendant shall file in court an acknowledgement of service of the application indicating whether or not he contests the application not more than 14 days after service on him of the application.

(4) Where the defendant has failed to file an acknowledgement of service and the time period for doing so has expired, the defendant may attend the hearing of the application but may not take part in the hearing unless the court gives permission.

The debtor’s evidence

6.255.—(1) If the debtor wishes to oppose the application, he shall within 28 days of the service of the application and evidence of the Secretary of State, file in court any evidence which he wishes the court to take into consideration, and shall serve a copy of such evidence upon the Secretary of State within 3 days of filing it at court.

(2) The Secretary of State shall, within 14 days from receiving the copy of the debtor’s evidence, file in court any further evidence in reply he wishes the court to take into consideration and shall as soon as reasonably practicable serve a copy of that evidence upon the debtor.

Making a debt relief restrictions order

6.256.—(1) The court may make a debt relief restrictions order against the debtor, whether or not the latter appears and whether or not he has filed evidence in accordance with Rule 6.255.

(2) Where the court makes a debt relief restrictions order, it shall send two sealed copies to the Secretary of State.

(3) As soon as reasonably practicable after receipt of the sealed copy of the order, the Secretary of State shall send a sealed copy of the order to the debtor.

CHAPTER 32

INTERIM DEBT RELIEF RESTRICTIONS ORDER

Application for interim debt relief restrictions order

6.257.—(1) Where the Secretary of State applies for an interim debt relief restrictions order under paragraph 5 of Schedule 4ZB to the Act, the court shall fix a venue for the hearing.

(2) Notice of an application for an interim debt relief restrictions order shall be given to the debtor at least 2 business days before the date set for the hearing unless the court directs otherwise.

(3) For the purposes of hearing an application under this Rule by a registrar, Rule 7.6(1) shall not apply and the application shall be heard in public.

The case against the debtor

6.258.—(1) The Secretary of State shall file a report in court as evidence in support of any application for an interim debt relief restrictions order.

(2) The report shall include evidence of the debtor’s conduct which is alleged to constitute the grounds for the making of an interim debt relief restrictions order and evidence of matters which relate to the public interest in making the order.

(3) Any evidence by persons other than the Secretary of State in support of an application for an interim debt relief restrictions order shall be by way of an affidavit.

Making an interim debt relief restrictions order

6.259.—(1) The debtor may file in court any evidence which he wishes the court to take into consideration and may appear at the hearing for an interim debt relief restrictions order.

(2) The court may make an interim debt relief restrictions order against the debtor, whether or not the latter appears, and whether or not he has filed evidence.

(3) Where the court makes an interim debt relief restrictions order, as soon as reasonably practicable, it shall send two sealed copies of the order to the Secretary of State.

(4) As soon as reasonably practicable after receipt of the sealed copies of the order, the Secretary of State shall send a copy of the order to the debtor.

Application to set aside an interim debt relief restrictions order

6.260.—(1) A person subject to an interim debt relief restrictions order may apply to the court to set the order aside.

(2) An application to set aside an interim debt relief restrictions order shall be supported by an affidavit stating the grounds on which the application is made.

(3) Where an application is made to set aside an interim debt relief restrictions order under paragraph (1), the person making the application shall send to the Secretary of State, not less than 7 days before the hearing—

- (a) notice of his application;
- (b) notice of the venue;
- (c) a copy of his application; and
- (d) a copy of the supporting affidavit.

(4) The Secretary of State may attend the hearing and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.

(5) Where the court sets aside an interim debt relief restrictions order two sealed copies of the order shall be sent, as soon as reasonably practicable, to the Secretary of State by the court.

(6) As soon as reasonably practicable after receipt of the sealed copies of the order, the Secretary of State shall send a sealed copy of the order to the applicant.

CHAPTER 33

DEBT RELIEF RESTRICTIONS UNDERTAKING

Acceptance of debt relief restrictions undertaking

6.261. A debt relief restrictions undertaking signed by a person in relation to whom a debt relief order has been made shall be deemed to have been accepted by the Secretary of State for the purposes of paragraph 9 of Schedule 4ZB to the Act when the undertaking is signed by the Secretary of State.

Notification

6.262. As soon as reasonably practicable after a debt relief restrictions undertaking has been accepted by the Secretary of State, a copy shall be sent to the person who offered the undertaking and to the official receiver.

Application under paragraph 9(3) of Schedule 4ZB to the Act to annul a debt relief restrictions undertaking.

6.263.—(1) An application under paragraph 9(3)(a) or (b) of Schedule 4ZB to the Act shall be supported by an affidavit stating the grounds on which it is made.

(2) The applicant shall give notice of the application and the venue, together with a copy of the affidavit supporting his application to the Secretary of State at least 28 days before the date fixed for the hearing.

(3) The Secretary of State may attend the hearing and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.

(4) The court shall send a sealed copy of any order annulling or varying the debt relief restrictions undertaking to the Secretary of State and the applicant.”.